

AN ACT relating to workers' compensation.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 342.0011 is amended to read as follows:

As used in this chapter, unless the context otherwise requires:

- (1) "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury;
- (2) "Occupational disease" means a disease arising out of and in the course of the employment;
- (3) An occupational disease as defined in this chapter shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence;

- (4) "Injurious exposure" shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made;
- (5) "Death" means death resulting from an injury or occupational disease;
- (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer;
- (7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter;
- (8) "Department" means the Department of Workers' Claims in the Labor Cabinet;
- (9) "Commissioner" means the commissioner of the Department of Workers' Claims;
- (10) "Board" means the Workers' Compensation Board;
- (11) (a) "Temporary total disability" means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment;
- (b) *"Temporary partial disability" means the condition of an employee who has not reached maximum medical improvement, but has reached a level of improvement that would permit the employee with medically imposed employment restrictions to return to some form of modified employment, with the same employer, but at lesser earnings than the employee earned at the time of the injury;*
- (c) "Permanent partial disability" means the condition of an employee who, due to an injury, has a permanent disability rating but retains the ability to work; and
- (d)~~(e)}~~ "Permanent total disability" means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury, except that total disability shall be irrebuttably presumed to exist for an injury that results in:

1. Total and permanent loss of sight in both eyes;
 2. Loss of both feet at or above the ankle;
 3. Loss of both hands at or above the wrist;
 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;
 5. Permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;
 6. Incurable insanity or imbecility; or
 7. Total loss of hearing;
- (12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits;
- (13) "Medical and related benefits" means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits;
- (14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits;
- (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices;
- (16) "Person" means any individual, partnership, limited partnership, limited liability company, firm, association, trust, joint venture, corporation, or legal representative thereof;
- (17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course of employment from persons other than the employer as evidenced by the employee's federal and state tax returns;
- (18) "Agriculture" means the operation of farm premises, including the planting,

cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations, including the sale of produce at on-site markets and the processing of produce for sale at on-site markets. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market;

- (19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter;
- (20) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States;
- (21) "Alien" means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien;
- (22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Kentucky Employers Mutual Insurance Authority and every self-insured group operating under the provisions of this chapter;
- (23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tipple or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption.

- (b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, limited partnerships, limited liability companies, corporations, joint ventures, associations, or any other business entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including but not limited to administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time;
- (24) "Premium" for every self-insured group means any and all assessments levied on its members by such group or contributed to it by the members thereof. For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group;
- (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the Department of Insurance by insurance companies, except that

"premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. For policies covering leased employees as defined in KRS 342.615, "premiums received" means premiums calculated

using the experience modification factor of each lessee as defined in KRS 342.615 for each leased employee for that portion of the payroll pertaining to the leased employee.

- (b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.
- (c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company

did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

- (d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors;
- (26) "Insurance policy" for an insurance company or self-insured group means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year;
- (27) "Self-insurance year" for a self-insured group means the annual period of certification of the group created pursuant to KRS 342.350(4) and 304.50-010;
- (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the commissioner using generally-accepted actuarial methods as follows:
 - (a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The commissioner shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to

current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of the claims using the adjusted weekly benefit shall then be calculated by the commissioner. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period;

- (b) The commissioner shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the department and from the records of the Office of Employment and Training, Education and Workforce Development Cabinet. The commissioner shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period;
- (c) The commissioner shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by 1.25 and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the department and the Office of Employment and Training data which shall be made available for this purpose on a quarterly basis as

- reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122;
- (d) For November 1, 1987, through December 31, 1988, premium for each employer carrying its own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying its own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews its application for certification to carry its own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the commissioner, which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification;
- (e) If an employer having fewer than five (5) years of doing business in this state applies to carry its own risk and is so certified, its premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then its premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the commissioner pursuant to KRS 342.340(1);
- (f) If an employer is certified to carry its own risk after having previously insured the risk, its premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be

necessary to create a full three (3) year base. After the employer is certified to carry its own risk and has paid all amounts due for assessments upon premiums paid while insured, the employer shall be assessed only upon the premium calculated under this subsection;

- (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection; and
 - (h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents (\$0.30) per one hundred dollars (\$100) of the employer's most recent annualized payroll for employees covered by this chapter;
- (29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget;
- (30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System;
- (31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits;
- (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth;
- (33) "Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods;

- (34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy;
- (35) "Permanent impairment rating" means percentage of whole body impairment caused by the injury or occupational disease as determined by the "Guides to the Evaluation of Permanent Impairment";
- (36) "Permanent disability rating" means the permanent impairment rating selected by an administrative law judge times the factor set forth in the table that appears at KRS 342.730(1)(c)~~(b)~~; ~~and~~
- (37) "Guides to the Evaluation of Permanent Impairment" means, except as provided in KRS 342.262:
- (a) The fifth edition published by the American Medical Association; and
 - (b) For psychological impairments, Chapter 12 of the second edition published by the American Medical Association; and

(38) "Medical provider" means a person or facility that provides medical services, including but not limited to a physician, chiropractor, psychiatrist, psychologist, hospital, pharmacy, diagnostic facility, optometrist, dentist, and physical, occupational, or other type of licensed therapist.

➔Section 2. KRS 342.020 is amended to read as follows:

- (1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability **for the length of time described in this section**, or as may be required for the cure and treatment of an occupational disease.
- (2) In a claim resulting in an award of permanent total disability or involving the need for prosthetic or assistive appliances,** the employer's obligation to pay **for the medical services**~~the benefits~~ specified in **subsection (1) of** this section shall

continue for so long as the employee is disabled regardless of the duration of the employee's income benefits.

(3) In all other awards not resulting in a permanent total disability or not involving the need for prosthetic or assistive appliances, the employer's obligation to pay for the medical services specified in subsection (1) of this section shall continue until the employee reaches the age of seventy (70) or five (5) years after the date of the injury, whichever is later.

(4) In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee. The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. The commissioner shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for payment may be tolled. The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered. Except as provided in subsection (4) of this section, in no event shall a medical fee exceed the limitations of an adopted medical fee schedule or other limitations contained in KRS 342.035, whichever is lower. The commissioner may promulgate administrative regulations establishing the form and content of a statement for services and procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of services may be resolved.

(5)~~(2)~~ Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be

subject to copayments or deductibles.

~~(6)~~~~(3)~~ Employers may provide medical services through a managed health care system. The managed health care system shall file with the Department of Workers' Claims a plan for the rendition of health care services for work-related injuries and occupational diseases to be approved by the commissioner pursuant to administrative regulations promulgated by the commissioner.

~~(7)~~~~(4)~~ All managed health care systems rendering medical services under this chapter shall include the following features in plans for workers' compensation medical care:

- (a) Copayments or deductibles shall not be required for medical services rendered in connection with a work-related injury or occupational disease;
- (b) The employee shall be allowed choice of provider within the plan;
- (c) The managed health care system shall provide an informal procedure for the expeditious resolution of disputes concerning rendition of medical services;
- (d) The employee shall be allowed to obtain a second opinion, at the employer's expense, from an outside physician if a managed health care system physician recommends surgery;
- (e) The employee may obtain medical services from providers outside the managed health care system, at the employer's expense, when treatment is unavailable through the managed health care system;
- (f) The managed health care system shall establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee; and
- (g) Statements for services shall be audited regularly to assure that charges are not

duplicated and do not exceed those authorized in the applicable fee schedules.

- (h) A schedule of fees for all medical services to be provided under this chapter which shall not be subject to the limitations on medical fees contained in this chapter.
- (i) Restrictions on provider selection imposed by a managed health care system authorized by this chapter shall not apply to emergency medical care.

~~(8)(5)~~ Except for emergency medical care, medical services rendered pursuant to this chapter shall be under the supervision of a single treating physician or physicians' group having the authority to make referrals, as reasonably necessary, to appropriate facilities and specialists. The employee may change his designated physician one (1) time and thereafter shall show reasonable cause in order to change physicians.

~~(9)(6)~~ When a compensable injury or occupational disease results in the amputation of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the employer shall pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) *of this section* and this subsection, a modern artificial member and, where required, proper braces as may reasonably be required at the time of the injury and thereafter during disability.

~~(10)(7)~~ Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction of the administrative law judge by affidavits or testimony that, because of the physician selected by the employee to treat the injury or disease, or because of the hospital selected by the employee in which treatment is being rendered, that the employee is not receiving proper medical treatment and the recovery is being substantially affected or delayed; or that the funds for medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the

employee's injury or disease; then the administrative law judge may allow the employer to select a physician to treat the employee and the hospital or hospitals in which the employee is treated for the injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.

~~(11)~~~~(8)~~ An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, or the administrative law judge, provide the requesting party with any information or written material reasonably related to any injury or disease for which the employee claims compensation.

~~(12)~~~~(9)~~ When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the commissioner, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.

(13) (a) Part of the justification for a medical fee schedule in workers' compensation is the guarantee and speed of payment; therefore, notwithstanding subsection (4) of this section, if an employer, its insurance

carrier, or any other entity on behalf of the employer files a challenge to a medical bill or service, and it is determined that the bill or service is appropriately payable pursuant to this section, the fee to be paid, whether by fee schedule, administrative regulation, or in some other manner shall be increased twenty percent (20%).

(b) If the employee whose treatment resulted in the challenge is represented by an attorney in the dispute, the attorney shall be entitled to a fee of fifteen percent (15%) of the total amount of the medical bill or cost for the medical service found payable, not to exceed three thousand five hundred dollars (\$3,500). This attorney fee shall be deducted from the payment made to the medical provider, and is exclusive of the attorney fee provided in Section 6 of this Act.

➔Section 3. KRS 342.040 is amended to read as follows:

- (1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid, except that if the administrative law judge determines that a denial, delay, or termination in the payment of income benefits was without reasonable foundation, the rate of interest shall be eighteen percent (18%) per annum. In no event shall income benefits be instituted later than the fifteenth day after the employer has knowledge of the disability or death. Income benefits shall be due and payable not less often than semimonthly. If the employer's insurance carrier or other party responsible for the payment of workers' compensation benefits should terminate or

fail to make payments when due, that party shall notify the commissioner of the termination or failure to make payments and the commissioner shall, in writing, advise the employee or known dependent of right to prosecute a claim under this chapter.

- (2) If overdue temporary total *or temporary partial* disability income benefits are recovered in a proceeding brought under this chapter by an attorney for an employee, or paid by the employer after receipt of notice of the attorney's representation, a reasonable attorney's fee for these services may be awarded. The award of attorney's fees shall be paid by the employer if the administrative law judge determines that the denial or delay was without reasonable foundation. No part of the fee for representing the employee in connection with the recovery of overdue temporary total *or temporary partial* disability benefits withheld without reasonable foundation shall be charged against or deducted from benefits otherwise due the employee.
- (3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable on the regular payday of the employer, commencing with the second regular payday after the award of the retraining incentive benefit by the administrative law judge becomes final. Retraining incentive benefits shall be due and payable not less often than semimonthly.
- (4) Upon written request of the employee, all payments of compensation shall be mailed to the employee at his or her last known address.

➔Section 4. KRS 342.125 is amended to read as follows:

- (1) Upon motion by any party or upon an administrative law judge's own motion, an administrative law judge may reopen and review any award or order on any of the following grounds:
 - (a) Fraud;
 - (b) Newly-discovered evidence which could not have been discovered with the

exercise of due diligence;

(c) Mistake;~~and~~

(d) Change of disability as shown by objective medical evidence of worsening or improvement of impairment due to a condition caused by the injury since the date of the award or order; or

(e) Additional temporary total or temporary partial disability benefits.

(2) No claim which has been previously dismissed or denied on the merits shall be reopened except upon the grounds set forth in this section.

(3) (a) Except for reopening solely for determination of the compensability of medical expenses, fraud, ~~for conforming the award as set forth in KRS 342.730(1)(c)2.,~~ or for reducing a permanent total disability award when an employee returns to work, ~~for seeking temporary total disability benefits during the period of an award,~~ no claim shall be reopened:

1. If permanent income benefits have not been awarded, more than four (4) years following the date of the original award or order granting or denying temporary total or temporary partial disability benefits; or,~~and~~

2. If permanent income benefits are awarded, after the time period of awarded permanent income benefits has expired.

(b) No party may file a motion to reopen within one (1) year of any previous motion to reopen by the same party.

(4) Reopening and review under this section shall be had upon notice to the parties and in the same manner as provided for an initial proceeding under this chapter. Upon reopening, the administrative law judge may end, diminish, or increase compensation previously awarded, within the maximum and minimum provided in this chapter, or change or revoke a previous order. The administrative law judge shall immediately send all parties a copy of the subsequent order or award.

Reopening shall not affect the previous order or award as to any sums already paid thereunder, and any change in the amount of compensation shall be ordered only from the date of filing the motion to reopen. No employer shall suspend benefits during pendency of any reopening procedures except upon order of the administrative law judge.

- (5) (a) Upon the application of the affected employee, and a showing of progression of his previously-diagnosed occupational pneumoconiosis resulting from exposure to coal dust and development of respiratory impairment due to that pneumoconiosis and two (2) additional years of employment in the Commonwealth wherein the employee was continuously exposed to the hazards of the disease, the administrative law judge may review an award or order for benefits attributable to coal-related pneumoconiosis under KRS 342.732. An application for review under this subsection shall be made within one (1) year of the date the employee knew or reasonably should have known that a progression of his disease and development or progression of respiratory impairment have occurred. Review under this subsection shall include a review of all evidence admitted in all prior proceedings.
- (b) Benefits awarded as a result of a review under this subsection shall be reduced by the amount of retraining incentive benefits or income benefits previously awarded under KRS 342.732. The amount to be deducted shall be subtracted from the total amount awarded, and the remaining amount shall be divided by the number of weeks, for which the award was made, to arrive at the weekly benefit amount which shall be apportioned in accordance with the provisions of KRS 342.316.
- (6) In a reopening or review proceeding where there has been additional permanent partial disability awarded, the increase shall not extend the original period, unless the combined prior *impairment rating and increased impairment rating exceeds*

the thresholds set forth in subsection(1)(e) of Section 7 of this Act. If the combined prior impairment rating and increased impairment rating exceeds twenty-six percent (26%) and is less than thirty-five percent (35%), the awarded period shall be five hundred twenty (520) weeks from commencement date of the original disability previously awarded. If the combined prior impairment rating and increased impairment rating exceeds thirty-five percent (35%), the awarded period shall be seven hundred eighty (780) weeks from the commencement date of the original disability previously awarded~~[disability and increased disability exceeds fifty percent (50%), but less than one hundred percent (100%), in which event the awarded period shall not exceed five hundred twenty (520) weeks, from commencement date of the original disability previously awarded.]~~ The law in effect on the date of the original injury controls the rights of the parties.

- (7) Where an agreement has become an award by approval of the administrative law judge, and a reopening and review of that award is initiated, no statement contained in the agreement, whether as to jurisdiction, liability of the employer, nature and extent of disability, or as to any other matter, shall be considered by the administrative law judge as an admission against the interests of any party. The parties may raise any issue upon reopening and review of this type of award which could have been considered upon an original application for benefits.
- (8) The time limitation prescribed in this section shall apply to all claims irrespective of when they were incurred, or when the award was entered, or the settlement approved.~~[However, claims decided prior to December 12, 1996, may be reopened within four (4) years of the award or order or within four (4) years of December 12, 1996, whichever is later, provided that the exceptions to reopening established in subsections (1) and (3) of this section shall apply to these claims as well.]~~

➔Section 5. KRS 342.265 is amended to read as follows:

- (1) If the employee and employer and special fund or any of them reach an agreement

conforming to the provisions of this chapter in regard to compensation, a memorandum of the agreement signed by the parties or their representatives shall be filed with the commissioner, and, if approved by an administrative law judge, shall be enforceable pursuant to KRS 342.305. Where all parties have not joined in the settlement agreement, it shall not be approved unless it is certified that the party not participating in the settlement has been served with a copy of the agreement not less than ten (10) days prior to submission of the agreement for approval. This provision shall not be construed to prevent the voluntary payment of compensation for the periods and in the amounts prescribed by this chapter, but nothing shall operate as a final settlement except a memorandum of agreement filed with the commissioner and approved by the administrative law judge. Upon claims settled after December 12, 1996, the special fund shall have the option of settling its liability for income benefits on the same terms as those reached between the employee and employer. Notice of the special fund exercise of the option granted in this subsection shall be made by letter of the director of the Division of Workers' Compensation Funds mailed to the parties within ten (10) days of receipt by the director of a copy of the agreement.

- (2) Settlement agreements concluded after July 14, 2000, providing for commuted lump-sum payment of future income benefits which would otherwise be payable in amounts greater than one hundred dollars (\$100) per week shall not be approved unless there is reasonable assurance that the worker will have an adequate source of income during disability. This subsection is remedial and applies to all pending and future claims.
- (3) Upon lump-sum settlement of future periodic payments, the discount rate used in the calculation of the settlement amount shall not exceed a reasonable amount fixed by the commissioner. ~~For settlements approved after December 12, 1996, until December 31, 1997, the true discount rate shall be six percent (6%) compounded~~

~~annually on each payment.]~~ Before January 1 of each year commencing in 2001, the commissioner shall fix the discount rate to be utilized in the succeeding year based at one-half of one percent (0.5%) below the interest rate paid upon ten (10) year United States Treasury Notes as of August 1 of the preceding year. **A claimant may require an award or settlement of less than sixty dollars (\$60) per week be paid in one (1) lump sum. However, if a claimant so elects, the discount rate shall be one (1) percentage point higher than the discount rate fixed by the commissioner.**

- (4) If the parties have previously filed an agreement which has been approved by the administrative law judge, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive.
- (5) An application for resolution of claim shall be held in abeyance during any period voluntary payments of income benefits are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay.
- (6) Following a settlement agreement or an award of income benefits in an original claim, a subsequent settlement of future medical expenses shall not be approved unless the settlement is approved by the federal Medicare Secondary Payer Act, 42 U.S.C. sec. 1395v(b).**

➔Section 6. KRS 342.320 is amended to read as follows:

- (1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be **in compliance with**~~[subject to the approval of an administrative law judge pursuant to]~~ the statutes and administrative regulations.
- (2) In an original claim, attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:
- (a) Twenty percent (20%) of the first **fifty**~~[twenty-five]~~ thousand dollars

~~(\$50,000)~~~~(\$25,000)~~ of the award~~, fifteen percent (15%) of the next ten thousand dollars (\$10,000),~~ and ~~ten~~~~[five]~~ percent ~~(10%)~~~~(5%)~~ of the remainder of the award, not to exceed a maximum fee of ~~twenty-four~~~~[twelve]~~ thousand dollars ~~(\$24,000)~~~~(\$12,000)~~. **Annually, the commissioner shall compute, in accordance with KRS 342.740, the increase or decrease in the state average weekly wage and consistent with this computation, shall adjust the maximum amount of attorney fees allowed in this section.** This fee shall be paid by the employee from the proceeds of the award or settlement; and

- (b) Attorney-client employment contracts entered into and signed **on or** after **the effective date of this Act**~~[July 14, 2000]~~, shall be subject to the conditions of paragraph (a) of this subsection.
- (3) **All attorneys shall file with the commissioner, with notice to the other party or parties, a notarized affidavit detailing the amount of fees charged and the basis for the fee calculation used**~~[In approving an allowance of attorney's fees, the administrative law judge shall consider the extent, complexity, and quality of services rendered, and in the case of death, the Remarriage Tables of the Dutch Royal Insurance Institute]. An administrative law judge may order a refund or reduction in the amount of the attorney's fee~~[may be denied or reduced]~~ upon proof of solicitation by the attorney. However, this provision shall not be construed to preclude advertising in conformity with standards prescribed by the Kentucky Supreme Court.~~
- (4) No attorney's fee in any case involving benefits under this chapter shall be paid until the **affidavit for the** fee is **filed with the commissioner as required in subsection (3) of this section**~~[approved by the administrative law judge]~~, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The **notarized affidavit for the**~~[motion for approval of an]~~ attorney's fee shall be submitted within thirty (30) days following finality of the claim. Except when the

attorney's fee is to be paid by the employer or carrier, the attorney's fee shall be paid in one (1) of the following ways:

- (a) The employee may pay the attorney's fee out of his or her personal funds or from the proceeds of a lump-sum settlement; or
 - (b) **If the award or settlement calls for weekly payments, then the employer or carrier shall issue the payment of the attorney's fee**~~[The administrative law judge, upon request of the employee, may order the payment of the attorney's fee]~~ in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the employee in equal installments over the duration of the award or until the attorney's fee has been paid, commuting sufficient sums to pay the fee.
- (5) At the commencement of the attorney-client relationship, the attorney shall explain to the employee the methods by which this section provides for the payment of the attorney's fee, and the employee shall select the method in which the attorney's fee is to be paid. His or her selection and statement that he or she fully understands the method to be used shall be submitted **to the commissioner** by his or her attorney, on a notarized form signed by the employee, **within thirty (30) days following the finality of the claim**~~[at the time the motion for approval of the attorney's fee is submitted]~~. The commissioner shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of an attorney's fees and contain an explanation in nontechnical language of each method.
- (6) The General Assembly declares that by the enactment of KRS 342.316(3), it is the legislative intent to encourage settlement and prompt administrative handling of those claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the administrative law judge shall give due regard to this legislative intent in the handling of uncontested claims ~~and the allowance of~~

attorney's fees therein].

- (7) In a claim that has been reopened pursuant to the provisions of this chapter, an attorney's fee may be **charged**~~[awarded by the administrative law judge]~~ subject to the limits set forth in subsection (2) of this section **and subsection (13) of Section 2 of this Act.**~~[In awarding the attorney's fee, the administrative law judge shall consider the factors set forth in subsection (3) of this section.]~~ If no additional amount is recovered upon reopening, no attorney's fee shall be awarded. No attorney's fee shall be allowed~~[or approved]~~ exceeding the amounts provided in subsection (2)(a) of this section applicable to any additional amount recovered.
- (8) ~~[Attorney's fees for representing employers in proceedings under this chapter pursuant to contract with the employer shall be subject to approval of the administrative law judge in the same manner as prescribed for attorney representation of employees.]~~ Employer attorney's fees are subject to the limitation of **twenty-four**~~[twelve]~~ thousand dollars **(\$24,000)**~~[\$12,000]] maximum fees, except that fees for representing employers shall not be dependent upon the result achieved. Employer attorney's fees may be paid on a periodic basis while a claim is adjudicated and the payments need not be **filed**~~[approved]~~ until the claims resolution process is completed. Fees for legal services in presenting a claim for reimbursement from the Kentucky coal workers' pneumoconiosis fund shall not exceed one thousand dollars (\$1,000). All such~~[approved]~~ fees shall be paid by the employer and in no event shall exceed the amount the employer agreed by contract to pay.~~

➔Section 7. KRS 342.730 is amended to read as follows:

- (1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:
- (a) For temporary or permanent total disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one

hundred ~~twenty~~ percent ~~(120%)~~~~[(100%)]~~ of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related impairment and conditions compensable under KRS 342.732 and hearing loss covered in KRS 342.7305 shall not be considered in determining whether the employee is totally disabled for purposes of this subsection.

(b) *For temporary partial disability, the difference between sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage at the time of injury and sixty-six and two-thirds percent (66 2/3%) of the weekly wage the employee earns after the injury, subject to the limitations set forth in paragraph (a) of this subsection for a period not to exceed twenty-six (26) weeks.*

(c) For permanent partial disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than ~~eighty-five~~~~[(seventy-five)]~~ percent ~~(85%)~~~~[(75%)]~~ of the state average weekly wage as determined by KRS 342.740, multiplied by the permanent impairment rating caused by the injury or occupational disease as determined by the "Guides to the Evaluation of Permanent Impairment," times the factor set forth in the table that follows:

AMA Impairment	Factor
0 to 5%	0.75 [(0.65)]
6 to 10%	0.90 [(0.85)]
11 to 15%	1.00
16 to 20%	1.00
21 to 27% [(25%)]	1.25 [(1.15)]
26 to 30%	1.35
28 [(31)] to 35%	1.75 [(1.50)]
36% and above	1.80 [(1.70)]

Any temporary total or temporary partial disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) or (b) of this section, whichever is applicable. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability ~~and medical benefits shall be paid for the duration of the disability~~.

- ~~(d)~~~~(e)~~ 1. If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of the injury and retains the physical capacity to perform the type of work that the employee performed at the time of the injury, the weekly benefit for permanent partial disability shall be determined under paragraph (c) of this subsection.
2. If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of the injury and the employee has been found, pursuant to the administrative process under this chapter, to not retain the physical capacity to perform the type of work that the employee performed at the time of the injury, payment of weekly benefit shall be two (2) times the amount otherwise payable under paragraph (c) of this subsection.
3. If the claimant has been found to retain the physical capacity to perform the type of work that he or she performed at the time of the injury, but the employer does not return the employee to his or her former job, payment of weekly benefits shall be two (2) times the amount otherwise payable under paragraph (c) of this subsection.
4. If, due to an injury, an employee has been found, pursuant to the administrative process under this chapter, to~~does~~ not retain the

physical capacity to return to the type of work that the employee performed at the time of injury **and does not return to work at a weekly wage equal to or greater than the average weekly wage at the time of injury**, the benefit for permanent partial disability shall be multiplied by three (3) times the amount otherwise determined under paragraph ~~(c)~~~~(b)~~ of this subsection, but this provision shall not be construed so as to extend the duration of payments~~}; or~~

~~2. If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of injury, the weekly benefit for permanent partial disability shall be determined under paragraph (b) of this subsection for each week during which that employment is sustained. During any period of cessation of that employment, temporary or permanent, for any reason, with or without cause, payment of weekly benefits for permanent partial disability during the period of cessation shall be two (2) times the amount otherwise payable under paragraph (b) of this subsection. This provision shall not be construed so as to extend the duration of payments}.~~

~~5.~~~~3.~~ Recognizing that limited education and advancing age impact an employee's post-injury earning capacity, an education and age factor, when applicable, shall be added to the income benefit multiplier set forth in paragraph **(d)2., 3., and 4.**~~(c)1.~~ of this subsection. If at the time of injury, the employee had less than eight (8) years of formal education, the multiplier shall be increased by four-tenths (0.4); if the employee had less than twelve (12) years of education or a high school General Educational Development diploma, the multiplier shall be increased by two-tenths (0.2); if the employee was age sixty (60) or older, the multiplier shall be increased by six-tenths (0.6); if the employee was age

fifty-five (55) or older, the multiplier shall be increased by four-tenths (0.4); or if the employee was age fifty (50) or older, the multiplier shall be increased by two-tenths (0.2).

~~4. Notwithstanding the provisions of KRS 342.125, a claim may be reopened at any time during the period of permanent partial disability in order to conform the award payments with the requirements of subparagraph 2. of this paragraph.~~

~~(e)~~~~(d)~~ For permanent partial disability:~~;~~

1. If an employee has a permanent impairment~~[disability]~~ rating of twenty-six~~[fifty]~~ percent (26%)~~[(50%)]~~ or less as a result of a work-related injury, the compensable permanent partial disability period shall be four hundred twenty-five (425) weeks;~~;~~ ~~and~~
2. If an employee has a~~the~~ permanent impairment~~[disability]~~ rating of twenty-seven percent (27%) and not more than thirty-five percent (35%)~~[is greater than fifty percent (50%)]~~, the compensable permanent partial disability period shall be five hundred twenty (520) weeks from the date the impairment or disability ~~[exceeding fifty percent (50%)]~~ arises; or
3. If the employee has a permanent impairment rating of greater than thirty-five percent (35%), the compensable permanent partial disability period shall be seven hundred eighty (780) weeks from the date the impairment or disability arises.

(f) Benefits payable for permanent partial disability shall not exceed ninety-nine percent (99%) of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined under KRS 342.740 and shall not exceed eighty-five~~[seventy-five]~~ percent (85%)~~[(75%)]~~ of the state average weekly wage, except for benefits payable pursuant to paragraph (d)4.~~[(e)1.]~~ of this

subsection, which shall not exceed one hundred percent (100%) of the state average weekly wage, nor shall benefits for permanent partial disability be payable for a period exceeding ~~seven~~^{five} hundred ~~eighty (780)~~^{twenty (520)} weeks~~, notwithstanding that multiplication of impairment times the factor set forth in paragraph (b) of this subsection would yield a greater percentage of disability~~.

~~(g)~~^(e) For permanent partial disability, impairment for nonwork-related disabilities, conditions previously compensated under this chapter, conditions covered by KRS 342.732, and hearing loss covered in KRS 342.7305 shall not be considered in determining the extent of disability or duration of benefits under this chapter.

- (2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.
- (3) Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his or her lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his or her death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order

named:

- (a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or
- (b) If there are both a widow or widower and such a child or children, to the widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of those benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or
- (c) If there is no widow or widower but such a child or children, then to the child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of those benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or
- (d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of KRS 342.750, or to both, in proportions that the commissioner provides by administrative regulation.
- (e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if the proportioned benefits remain unpaid, to be paid in a lump sum.

- (4) All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee reaches age seventy (70)~~[qualifies for normal old-age Social Security retirement benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f,]~~ or five (5)~~[two (2)]~~ years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate when such spouses and dependents qualify for benefits under the United States Social Security Act by reason of the fact that the worker upon whose earnings entitlement is based would have qualified for normal old-age Social Security retirement benefits.
- (5) All income benefits pursuant to this chapter otherwise payable for temporary total, temporary partial, and permanent total disability shall be offset by unemployment insurance benefits paid for unemployment during the period of temporary total, temporary partial, or permanent total disability.
- (6) All income benefits otherwise payable pursuant to this chapter shall be offset by payments made under an exclusively employer-funded disability or sickness and accident plan which extends income benefits for the same disability covered by this chapter, except where the employer-funded plan contains an internal offset provision for workers' compensation benefits which is inconsistent with this provision.
- (7) If an employee receiving a permanent total disability award returns to work, that employee shall notify the employer, payment obligor, insurance carrier, or special fund as applicable.

➔Section 8. KRS 342.735 is amended to read as follows:

- (1) The commissioner shall promulgate administrative regulations to expedite the payment of temporary total and temporary partial disability and medical expense benefits.
- (2) The commissioner may promulgate administrative regulations incorporating

managed care intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.

- (3) The commissioner shall promulgate administrative regulations pursuant to KRS Chapter 13A establishing an expedited method for resolving medical issues prior to the filing of a claim with the Department of Workers' Claims. The administrative regulations shall permit an employee or other interested party, prior to the filing of a claim, to request a determination by an administrative law judge on medical issues relating to the reasonableness or appropriateness of the proposed medical care or relating to the obligation of the employer or the employer's insurance carrier to make payment of contested medical bills. However, the employee has the burden of proof to show the medical expenses are related to the injury, reasonable and necessary prior to an application of benefits being filed and before an award or order of benefits. Thereafter, the burden is upon the employer. The respondent to the moving party shall be given ten (10) days to answer a request for an expedited determination of medical issues, and the administrative law judge shall issue a ruling within seven (7) days thereafter. The interested parties shall be provided a form to provide to the medical care provider and the completed form filed with the department and served upon the respondent shall initiate the time for response and determination.

➔Section 9. KRS 342.990 is amended to read as follows:

- (1) The commissioner shall initiate enforcement of civil and criminal penalties imposed in this section.
- (2) When the commissioner receives information that he or she deems sufficient to determine that a violation of this chapter has occurred, he or she shall seek civil penalties pursuant to subsections (3) to (7) of this section, criminal penalties pursuant to subsections (8) and (9) of this section, or both.

- (3) The commissioner shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.
- (4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the commissioner that he or she intends to contest the citation, then the citation shall be deemed final.
- (5) If a cited party notifies the commissioner that he or she intends to challenge a citation issued under this section, the commissioner shall cause the matter to be heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the commissioner to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a ruling within sixty (60) days following the hearing.
- (6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court in conformity with KRS 13B.140.
- (7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:
 - (a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense;
 - (b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(1) without having reasonable grounds to delay payment may be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense;
 - (c) Any person who violates KRS 342.020~~(12)~~~~(9)~~, 342.035(2), 342.040,

342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the commissioner of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the commissioner within twenty-one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the department pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice;

- (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense;
- (e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the commissioner pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000)

- for each violation;
- (f) Except as provided in paragraph (g) of this subsection, a person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars (\$300) shall be fined per occurrence not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater;
 - (g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars (\$300) shall be fined per occurrence not more than five thousand dollars (\$5,000) per individual nor ten thousand dollars (\$10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater;
 - (h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each violation;
 - (i) Any violation of the provisions of this chapter relating to self-insureds shall constitute grounds for decertification of such self-insured, a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per occurrence, or both; and
 - (j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District Court and the Franklin Circuit Court.
- (8) The commissioner shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the commissioner shall certify the inaction by the local prosecutor to the Attorney

General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.

- (9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:
- (a) Any person who violates KRS 342.020(~~12~~)(~~9~~), 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisoned for not less than thirty (30) days nor more than one hundred eighty (180) days, or both;
 - (b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both;
 - (c) Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, general partner, agent, or representative of the foregoing who knowingly utilizes or participates in any employee leasing arrangement or mechanism as defined in KRS 342.615 for the purpose of depriving one (1) or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium shall upon conviction thereof be subject to a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or imprisonment for not more than one hundred eighty (180) days, or both, for each offense; and
 - (d) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9)

above, such person, if the person is an owner in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.

- (10) Fines paid pursuant to KRS 342.267 and subsections (7) and (9) of this section shall be paid into the self-insurance fund established in KRS 342.920.
- (11) In addition to the penalties provided in this section, the commissioner and any administrative law judge or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.